
Early Learning & Children's Services Committee

ESSB 5811

Brief Description: Concerning foster child placements.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Shin and Roach).

<p style="text-align: center;">Brief Summary of Engrossed Substitute Bill</p> <ul style="list-style-type: none">• Requires the court to inquire and make findings in children's dependency cases relating to placement of the child with a relative.

Hearing Date: 3/24/09

Staff: Sydney Forrester (786-7120)

Background:

Relative Placements for Children Needing Out-of-Home Care in Dependency Cases.

Whenever the court orders a child placed in out-of-home care at a shelter care hearing, the priority placement is with a relative or a suitable person who is willing and able to meet the child's needs. Suitable persons are those persons with whom the child or family has a pre-existing relationship, who have completed all necessary background checks, and who appear to be suitable and competent to care for the child.

Depending on the urgency of the child's case, placement with a relative or other suitable person may not always be possible for the initial placement following shelter care. When the initial placement is not with a relative, the Department of Social and Health Services (DSHS) continues to try to identify a relative placement for the child. At the disposition hearing (immediately following fact-finding), the preferred placement for a child needing out-of-home care also is with a relative, and in cases where the suitability of a relative has not been determined by the time of

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the disposition hearing, the court must direct the DSHS or other supervising agency to conduct the necessary background check and report back to the court within 30 days.

Absent good cause, the DSHS or supervising agency must follow the wishes of the parent regarding placement of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child will be jeopardized or the reunification will be hindered, the child must be placed with a relative with whom the child has a relationship and is comfortable and who is willing and available to care for the child. Placements with nonrelatives are conditioned on the court finding that the placement is in the child's best interests.

Orders for Housing Assistance in Children's Dependency Cases.

In children's dependency cases, the court has authority to order various treatment and services, including preventive services, be provided to parents and children to facilitate reunification. The court has explicit authority to order housing assistance when two conditions are met:

1. Homelessness or the lack of adequate and safe housing is the primary reason for the child's out-of-home placement.
2. Funding appropriated specifically for housing assistance is available.

In 1997 the Washington State Supreme Court, in *Washington State Coalition for the Homeless v. DSHS*, 133 Wn.2d 894 (1997), ruled that the juvenile dependency court "has authority to order the Department of Social and Health Services (DSHS) to provide the family with some form of assistance in securing adequate housing in those cases where homelessness or lack of safe and adequate housing is the primary reason for the foster placement or the primary reason for" continuing the child's placement out of the home. The court also held that the nature of housing assistance services provided to families was within the discretion of the DSHS, but the court would determine the adequacy of the services and the reasonableness of the agency's effort. Following this ruling, the Legislature amended the dependency statute in a number of areas to include "housing assistance" and "housing services."

The term "housing services" is one of the "preventive services" defined as "services capable of preventing the need for an out-of-home placement while protecting the child." "Housing services" are described as referrals to federal, state, local, or private agencies that assist people in need with completing forms and applications, or that provide financial subsidies for housing. The term "housing assistance" is not defined in the dependency statute.

Mandatory Standard Court Forms.

The Administrative Office of the Courts (AOC) is required to develop and revise standard court forms and format rules for the use in family law cases. The forms are available on the AOC's website to be downloaded and are also available for purchase from county court clerks' offices. There is no statutory requirement for the AOC to produce specific forms for use by litigants in dependency cases.

Office of the Family and Children's Ombudsman.

The Office of the Family and Children's Ombudsman (OFCO) was established in 1996 by the Legislature to ensure that abused and neglected children and their parents are served reasonably and fairly by government agencies. The OFCO is part of the Governor's office and operates independently from the DSHS and other state agencies.

The OFCO investigates complaints about agency actions or inaction that involve:

- any child at risk of abuse, neglect, or other harm; and
- a child or parent involved with child protection or child welfare services.

The OFCO intervenes in cases in which it determines that an agency's action or inaction is unauthorized or unreasonable. In addition to addressing complaints, the OFCO works to identify system-wide issues and recommend appropriate changes in public reports to the Governor, the Legislature, and agency officials. The most current report from the OFCO was received January 30, 2009.

Children's Interests and Representation in Dependency Cases.

Upon the filing of a dependency petition, state law requires a copy of the summons and petition be sent to children ages 12 years and older who are the subject of such petitions. Parents, guardians, and custodians of children also are summoned, and the court may include an order for the child to be brought to the fact-finding hearing on the dependency petition. For children in dependencies, the court is required to appoint a guardian ad litem (GAL) unless good cause exists not to do so. This requirement is considered satisfied for children who are directly represented by independent counsel. The court may appoint an attorney to represent a child age 12 years or older who requests independent counsel, or if the court or the GAL determine the child should be directly represented by counsel.

Statewide there is considerable variability regarding both GAL programs and whether children in dependencies are represented by independent counsel. Counties without a sufficient number of contracted or available GALs may appoint lay volunteers to serve as special advocates for children in dependencies. In some counties most children are represented by independent counsel, and these children may or may not also have an appointed GAL or volunteer advocate.

Both GALs and volunteer advocates are charged with investigating relevant information and making recommendations to the court regarding what they believe is in the child's best interests. Some GALs are also licensed attorneys, although their role as GAL differs from that of independent counsel. Attorney's providing direct representation must represent the child's stated interests and are required to protect the child's legal rights and interests in the dependency case.

Other than the requirement for a child over the age of 12 to receive a summons and petition when a dependency is initiated, there is no requirement for a youth to receive further notice of dependency hearings or other information about his or her case. Similarly there is no express right granted to a child to be heard in dependency proceedings, except in a limited pilot program established in 2008 by the Legislature.

That pilot program is operating in Spokane, King, Thurston, and Benton-Franklin counties and is structured as follows:

- For children ages 12 years and older who are the subjects of dependency proceedings, the following rights are established: a) the right to receive notice of hearings; b) the right to be present at hearings; and c) the right to be heard personally.
- Prior to hearings, the child's GAL or attorney must determine if the child wishes to attend the hearing. If the child wishes to attend, the attorney and GAL must coordinate with the child's caregiver and the DSHS or other supervising agency to arrange for transportation.

If the child exercises his or her right to be present, the court may interview the child in chambers to determine the child's wishes regarding issues before the court.

Summary of Bill:

Relative Placements for Children Needing Out-of-Home Care in Dependency Cases.

The court must inquire and make an express finding during all dependency hearings whether the DSHS has discussed with the child's parents a possible relative placement for the child. If at the disposition hearing, the court does not order the child be placed with a relative, the court must make an express finding as to the reasons such a placement was not ordered. Whenever the DSHS or supervising agency recommends against continued placement with either a relative or a foster parent, and the court agrees with that recommendation, the court must make an express finding as to the reasons for its agreement with the DSHS or supervising agency.

Orders for Housing Assistance in Children's Dependency Cases.

A definition is created for *housing service or assistance* and the term includes, at least:

- effective referrals to appropriate agencies or organizations;
- assistance with forms; or
- financial assistance for housing.

Housing services or assistance is incorporated into the definition of *preventive services*, and references to *housing service or assistance* are added to various court hearings in the dependency statute when the court is directed to inquire regarding the preventive services offered to the family. *Homelessness or lack of adequate and safe housing* is defined as constituting the primary reason for out-of-home placement when the provision of housing services or assistance would likely prevent the need for out-of-home placement or shorten the length of stay in out-of-home care. *Housing services or assistance* is declared to not be an entitlement under the child dependency chapter and the court shall not order housing services or assistance if funding is not available or if the family is not eligible.

Mandatory Standard Court Forms.

By November 1, 2009, the AOC must develop standard court forms and rules for mandatory use in children's dependency cases. The mandatory use requirement takes effect January 1, 2010. The AOC has continuing responsibility to develop and revise the forms and format rules as appropriate. Rules must allow a party to delete from the mandatory form unnecessary portions and to supplement the forms with additional material. If a party fails to use a mandatory form or follow the format rules, the case cannot be dismissed, a filing refused, or a pleading stricken, but the court may require the party to submit a corrected pleading and may impose terms. The AOC must distribute a master copy of the forms to all county court clerks and the AOC and the clerks must distribute the forms upon request. A fee may be charged for the cost of production and distribution of the forms, which may be delivered in hard copy or by electronic means.

Office of Family and Children's Ombudsman.

The OFCO is authorized to investigate allegations of retaliation against foster parents. Upon conclusion of its investigation, the OFCO must provide the DSHS with a written report of its findings. If the DSHS finds that more likely than not, an employee has participated in retaliation against a foster parent, based on the OFCO findings or other information, the DSHS must take

immediate action against the employee and must notify the OFCO within 30 days of receiving the OFCO's report of any personnel action taken or to be taken against the employee.

Children's Interests and Representation in Dependency Cases.

The DSHS must place on its public website a document listing the duties and responsibilities it has to a child in a dependency case. The document must describe at least the following requirements and services:

- reasonable efforts toward reunification of the child with the child's family;
- sibling visits;
- parent-child visits, subject to the applicable statutory restrictions; and
- a statutory preference for placement with a relative.

The document must be prepared with the assistance of a community-based organization and must be updated as needed. Once a dependency is established by court order, the social worker assigned to a child's case must provide the child with a copy of the document from the website, explain the contents of the document to the child, and direct the child to the DSHS's website for further information. The social worker must document that this requirement was met.

At any hearing occurring after the dependency is established, the court must ensure a youth over the age of 12 who is present in the courtroom is aware of and understands the duties and responsibilities the DSHS has toward him or her. The court must specifically address the issues required to be included in the document and website. If the child is represented by independent counsel, the court need not address the duties and responsibilities of the DSHS toward the child.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.